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PARTIES

6. Plaintiff Brigitte Stelzer is an individual who is a citizen of the State of New York and maintains a principal place of business 22-39 74th Street, East Elmhurst in Queens County, New York.

7. On information and belief, Defendant Backchina, LLC, is a Texas Limited Liability Company with a principal place of business at 11200 Broadway, Pearland in Brazoria County, Texas and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

9. This Court has personal jurisdiction over Backchina, LLC because it maintains its principal place of business in Texas.

10. Venue is proper under 28 U.S.C. §1391(a)(2) because Backchina, LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

11. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

12. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

13. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

14. Plaintiff's photographs are original, creative works in which Plaintiff's own protectable copyright interests.

15. Backchina, LLC is the registered owner of the Website and is responsible for its content.

1 16. Backchina, LLC is the operator of the Website and is responsible for its content.

2 17. The Website is a popular and lucrative commercial enterprise.

3 18. The Website is monetized in that it contains paid advertisements and, on
4 information and belief, Defendant profits from these activities.

5 19. The Website is monetized in that sells merchandise to the public and, on
6 information and belief, Defendant profits from these activities.

7 20. On October 5, 2018 Plaintiff Brigitte Stelzer authored a photograph of Tina
8 Torabi (the "*Photograph*"). A copy of the Photograph is attached hereto as Exhibit 1.

9 21. Plaintiff applied to the USCO to register the Photograph on November 20, 2018
10 under Application No. 1-7151724701.

11 22. The Photograph was registered by USCO on November 20, 2018 under
12 Registration No. VA 2-128-627.

13 23. On October 11, 2018 Plaintiff observed the Photograph on the Website. A copy
14 of screengrab of Website including the Photograph is attached hereto as Exhibit 2.

15 24. The Photograph was displayed at URL:
16 <https://www.backchina.com/news/2018/10/09/587038.html>.

17 25. Without permission or authorization from Plaintiff, Defendant volitionally
18 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph as set forth
19 in Exhibit "1" which is annexed hereto and incorporated in its entirety herein, on the Website.

20 26. On information and belief, the Photograph was copied, stored and displayed
21 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
22 "*Infringement*").

23 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
24 tangible medium of expression that was sufficiently permanent or stable to permit it to be
25 communicated for a period of more than transitory duration and therefore constitutes a specific
26 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th
27 Cir. 2007).
28

1 28. The Infringement is an exact copy of the entirety of Plaintiff's original image
2 that was directly copied and stored by Defendant on the Website.

3 29. On information and belief, Defendant takes an active and pervasive role in the
4 content posted on its Website, including, but not limited to copying, posting, selecting,
5 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

6 30. On information and belief, Defendant directly contributes to the content posted
7 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
8 ("Employees").

9 31. On information and belief, at all material times the Employees were acting
10 within the course and scope of their employment when they posted the Infringement.

11 32. On information and belief, at all material times the Employees were acting
12 within the course and scope of their agency when they posted the Infringement.

13 33. On information and belief, the Photograph was willfully and volitionally posted
14 to the Website by Defendant.

15 34. On information and belief, Defendant is not registered with the United States
16 Copyright Office pursuant to 17 U.S.C. §512.

17 35. On information and belief, the Infringement were not posted at the direction of
18 a "user" as that term is defined in 17 U.S.C. §512(c).

19 36. On information and belief, Defendant was aware of facts or circumstances from
20 which the determination regarding the Infringement was apparent. Defendant cannot claim that
21 it was aware of the infringing activities, including the specific Infringement which form the
22 basis of this complaint, since such a claim would amount to only willful blindness to the
23 Infringement on the part of Defendant.

24 37. On information and belief, Defendant engaged in the Infringement knowingly
25 and in violation of applicable United States Copyright Laws.

26 38. On information and belief, Defendant has the legal right and ability to control
27 and limit the infringing activities on its Website and exercised and/or had the right and ability
28

1 to exercise such right.

2 39. On information and belief, Defendant monitors the content on its Website.

3 40. On information and belief, Defendant has received a financial benefit directly
4 attributable to the Infringement.

5 41. On information and belief, the Infringement increased traffic to the Website and,
6 in turn, caused Defendant to realize an increase its advertising revenues and/or merchandise
7 sales.

8 42. On information and belief, a large number of people have viewed the unlawful
9 copies of the Photograph on the Website.

10 43. On information and belief, Defendant at all times had the ability to stop the
11 reproduction and display of Plaintiff's copyrighted material.

12 44. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
13 potential market for the Photograph.

14 45. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.
15

16 **FIRST COUNT**

17 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

18 46. Plaintiff repeats and incorporates by reference the allegations contained in the
19 preceding paragraphs, as though set forth in full herein.

20 47. The Photograph is an original, creative works in which Plaintiff owns valid
21 copyright properly registered with the United States Copyright Office.

22 48. Plaintiff has not licensed Defendant the right to use the Photograph in any
23 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

24 49. Without permission or authorization from Plaintiff and in willful violation of
25 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,
26 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff
27 thereby violating one of Plaintiff's exclusive rights in its copyrights.

28 50. Defendant's reproduction of the Photograph and display of the Photograph on

1 the Website constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural*
2 *Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

3 51. Plaintiff is informed and believes and thereon alleges that the Defendant
4 willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S.
5 Code, in that they used, published, communicated, posted, publicized, and otherwise held out
6 to the public for commercial benefit, the original and unique Photograph of the Plaintiff without
7 Plaintiff's consent or authority, by using them in the infringing articles on the Website.

8 52. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
9 entitled to any an award of actual damages and disgorgement of all of Defendant's profits
10 attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or,
11 in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant
12 in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c).

13 53. As a result of the Defendant' violations of Title 17 of the U.S. Code, the court in
14 its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs
15 pursuant to 17 U.S.C § 505 from Defendant.

16 54. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
17 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
18 U.S.C. § 502.

19
20 **SECOND COUNT**

21 ***(Falsification, Removal and Alteration of Copyright Management***
22 ***Information 17 U.S.C. § 1202)***

23 55. Plaintiff repeats and incorporates, as though fully set forth herein, each and every
24 allegation contained in the preceding paragraphs, as though set forth in full herein.

25 56. Upon information and belief, Defendant knew that Plaintiff created and held
26 rights to the Photograph because *inter alia*, the source of the Photograph that Defendant used
27 to make its infringing copy specifically attributed the Photograph to Plaintiff by watermark or
28 photo credit.

1 57. Upon information and belief, in its article on the Website, Defendant copied the
2 Photograph from [https://nypost.com/2018/10/05/mom-accused-in-brutal-beating-of-twins-](https://nypost.com/2018/10/05/mom-accused-in-brutal-beating-of-twins-napped-peacefully-before-arraignment/)
3 [napped-peacefully-before-arraignment/](https://nypost.com/2018/10/05/mom-accused-in-brutal-beating-of-twins-napped-peacefully-before-arraignment/) (Exhibit 3) which contained a photo credit underneath
4 the Photograph stating Brigitte Stelzer the owner and author of the Photograph.

5 58. Upon information and belief, Defendant intentionally removed copyright
6 management information related to the Photograph with the intent to induce, enable, facilitate,
7 or conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant
8 purposefully failed to include the photo credit originally conveyed with the Photograph in order
9 to mislead the public into believing that Defendant either owned the Photograph or had
10 legitimately licensed them for use in the Infringement. Upon information and belief, in addition
11 to removing the photo credit, Defendant also removed the metadata from the Photograph.

12 59. In addition, Defendant displayed the unauthorized copies of the Photograph
13 knowing the copyright management information had been removed.

14 60. Defendant' conduct violates 17 U.S.C. § 1202(a) and 1202(b).

15 61. Upon information and belief, Defendant's falsification, removal and/or alteration
16 of the aforementioned copyright management information was made without the knowledge or
17 consent of Plaintiff.

18 62. Upon information and belief, the falsification, alteration and/or removal of said
19 copyright management information was made by Defendant intentionally, knowingly and with
20 the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in
21 the Photograph. Defendant also knew, or should have known, that such falsification, alteration
22 and/or removal of said copyright management information would induce, enable, facilitate, or
23 conceal their infringement of Plaintiff's copyright in the Photograph.

24 63. Plaintiff has sustained significant injury and monetary damages as a result of
25 Defendant' wrongful acts as hereinabove alleged, and as a result of being involuntarily
26 associated with Defendant in an amount to be proven.

27 64. In the alternative, Plaintiff may elect to recover statutory damages pursuant to
28

1 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from Defendant for each violation
2 of 17 U.S.C. § 1202.

3 65. Alternatively, Plaintiff may elect to recover from Defendant statutory damages
4 pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation
5 of 17 U.S.C. § 1202.

6 **JURY DEMAND**

7 66. Plaintiff hereby demands a trial of this action by jury.
8

9 **PRAYER FOR RELIEF**

10 **WHEREFORE** Plaintiff respectfully requests judgment as follows:
11

12 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
13 rights to the Photograph in violation of 17 U.S.C. § 501 et seq. and award damages and monetary
14 relief as follows:

- 15 a. finding that Defendant infringed Plaintiff's copyright interest in the
16 Photograph by copying and displaying without a license or consent;
- 17 b. for an award of actual damages and disgorgement of all of Defendant's
18 profits attributable to the infringements as provided by 17 U.S.C. § 504
19 in an amount to be proven or, in the alternative, at Plaintiff's election, an
20 award for statutory damages against each Defendant in an amount up to
21 \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c),
22 whichever is larger;
- 23 c. for an award of actual damages or, in the alternative, statutory damages
24 against each Defendant in an amount up to \$25,000.00 for each
25 falsification or removal of copyright management information pursuant
26 to 17 U.S.C. § 1202;
- 27 d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from
28 any infringing use of any of Plaintiff's works;

- e. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- f. for pre judgment interest as permitted by law; and
- g. for any other relief the Court deems just and proper.

DATED: June 9, 2021

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